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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 MICHAEL D. GOON,

11 Plaintiff,

12 v.

13 MICHAEL COLEMAN, et al.,

14 Defendants.

CASE NO. C18-1445JLR

ORDER GRANTING IN PART
MOTION FOR SUMMARY
JUDGMENT AND DISMISSING
STATE LAW CLAIMS
WITHOUT PREJUDICE

15 **I. INTRODUCTION**

16 There are two motions before the court: (1) Defendants Michael Coleman,
17 Washington State Department of Corrections (“DOC”), and State of Washington’s
18 (collectively, “Defendants”) motion for summary judgment (MSJ (Dkt. # 30); *see also*
19 MSJ Reply (Dkt. # 45)); and (2) Plaintiff Michael D. Goon’s motion to exclude the
20 testimony of one of Defendants’ expert witnesses, Ron Berman (MTE (Dkt. # 27); *see*
21 *also* MTE Reply (Dkt. # 36)). Defendants and Mr. Goon filed responses to the respective
22 motions. (*See* MSJ Resp. (Dkt. # 43); MTE Resp. (Dkt # 34).) The court has considered

1 the motions, the parties' submissions concerning the motions, the relevant portions of the
2 record, and the applicable law.¹ Being fully advised, the court GRANTS in part
3 Defendants' motion for summary judgment on Mr. Goon's 42 U.S.C. § 1983 claim and
4 DECLINES to rule in part on Defendants' motion for summary judgment regarding Mr.
5 Goon's state law claims. Having granted summary judgment on Mr. Goon's only federal
6 claim, the court DECLINES to exercise supplemental jurisdiction over Mr. Goon's
7 remaining state law claims and therefore DISMISSES those claims without prejudice and
8 DENIES Mr. Goon's motion to exclude Mr. Berman as moot.

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11 ¹ Mr. Goon requests oral argument on the motion for summary judgment. (*See* MSJ
12 Resp. at 1.) A district court's denial of a request for oral argument on summary judgment does
13 not constitute reversible error in the absence of prejudice. *See Partridge v. Reich*, 141 F.3d 920,
14 926 (9th Cir. 1998) (citing *Fernhoff v. Tahoe Reg'l Planning Agency*, 803 F.2d 979, 983 (9th Cir.
15 1986)). There is no prejudice in refusing to grant oral argument where the parties have ample
16 opportunity to develop their legal and factual arguments through written submissions to the
17 court. *Id.* ("When a party has an adequate opportunity to provide the trial court with evidence
18 and a memorandum of law, there is no prejudice [in refusing to grant oral argument] . . .")
19 (quoting *Lake at Las Vegas Investors Grp., Inc. v. Pac. Malibu Dev. Corp.*, 933 F.2d 724, 729
20 (9th Cir. 1991)) (alterations in *Partridge*). Mr. Goon has provided the court with lengthy written
21 submissions and supporting documentation in opposition to Defendants' motion for summary
22 judgment. (*See* MSJ Resp.; MSJ Resp. at 22-107 ("1st Karp Decl."), Exs. A-D; Goon Decl. (Dkt.
39); Leanne Taylor Decl. (Dkt. # 40); Thomas Decl. (Dkt. # 41); Ward Decl. (Dkt. # 42); 2d
Karp Decl. (Dkt. # 44).) Mr. Goon has also submitted substantive evidence in support of his
motion to exclude Mr. Berman. (*See* MTE; MTE Reply; 1st Crosby Decl. (Dkt. # 28); 2d
Crosby Decl. (Dkt. # 29).) Defendants have also submitted briefing, additional deposition
testimony, and partial video footage of the shooting. (*See* MSJ; MSJ Reply; Clay Decl. (Dkt.
31), Exs. A-F.) Given that the court has sufficient written materials to decide this motion, the
court has determined that oral argument would not be of assistance. *See* Local Rules W.D.
Wash. LCR 7(b)(4). Moreover, as discussed below, *see infra* § III.A.4, although the court grants
summary judgment on Mr. Goon's 42 U.S.C. § 1983 claim on qualified immunity grounds, the
court dismisses the remainder of Mr. Goon's state law claims without prejudice under 28 U.S.C.
§ 1367. *See* 28 U.S.C. § 1367(c)(3). As such, Mr. Goon may adjudicate the remainder of his
state claims in state court, which further limits the possibility of prejudice to Mr. Goon. Thus,
the court DENIES Mr. Goon's requests for oral argument.

II. BACKGROUND

This case arises from unfortunate facts. On November 30, 2017, Defendant Michael Coleman—an officer with the DOC—fatally shot Plaintiff Michael Goon’s dog, Shilo.² (*See* Am. Compl. (Dkt. # 4) ¶¶ 12, 18; Answer (Dkt. # 12) ¶¶ 12, 18 (admitting Mr. Goon’s allegation that Officer Coleman shot and killed Shilo on November 30, 2017).³) Shilo was a five-year old, 97-pound, neutered male pit bull. (*See* Am. Compl. ¶ 5; Clay Decl. ¶ 3, Ex. A (“Goon Dep.”) at 15:13-18; Ward Decl. at 9-10 (“Necropsy Rpt.”))

At some point in 2017, Mr. Goon’s partner, Leanne Taylor, filed paperwork with the DOC in an attempt to obtain authorization for her son, Ryan Rodarte, to be work released to the home that she shared with Mr. Goon. (*See* Leanne Taylor Decl. ¶ 2; Clay Decl. ¶ 5, Ex. C (“Leanne Taylor Dep.”) at 12:1-18.) The parties refer to this process as the Offender Release Program (“ORP”) inspection. (*See* Clay Decl. ¶ 6, Ex. D (“Coleman Dep.”⁴) at 65:9-18, 82:10-20; Leanne Taylor Decl. ¶ 2.) In order for Mr. Rodarte to be released to Ms. Taylor’s home as part of the ORP, the DOC required a

² The evidence submitted by the Defendant is inconsistent on whether Mr. Goon’s dog was named Shilo or Shiloh. (*Compare* Goon Decl. (spelling the dog’s name as “Shiloh”) with Leanne Taylor Decl. (spelling the dog’s name as “Shilo”).) The court adopts the spelling “Shilo,” as that is the spelling used in the complaint. (*See* Am. Compl. ¶ 5.)

³ “[U]nder federal law, stipulations and admissions in the pleadings are generally binding on the parties and the [c]ourt.” *Am. Title Ins. Co. v. Lacelaw Corp.*, 861 F.2d 224, 226 (9th Cir. 1988) (citations omitted).

⁴ Portions of Officer Coleman’s deposition are also in the record as Exhibit A to Mr. Karp’s declaration. (*See* 1st Karp Decl., Ex. A.) The court cites to Officer Coleman’s deposition as “Coleman Dep.” wherever it appears in the record.

1 home inspection to determine whether the home would be a suitable placement for Mr.
2 Rodarte. (*See* Coleman Dep. at 65:9-18, 82:10-20.)

3 In the weeks prior to November 30, 2017, Ms. Taylor spoke to a DOC officer who
4 she believes was named “David” over the phone about the ORP inspection. (*See* Leanne
5 Taylor Decl. ¶ 3.) Ms. Taylor testifies that the officer she spoke with informed her of the
6 home inspection requirement but told her that information would be mailed to her home
7 and then the DOC would contact her again to schedule the inspection. (*See id.* ¶¶ 2-3, 5.)
8 During that call, Ms. Taylor informed the officer that she had a “blue-nosed pit” in her
9 home that was “quite gentle.” (*See id.* ¶ 4.) Records from the DOC are consistent with
10 this portion of Ms. Taylor’s recollection. (*See id.* at p.6 (DOC ORP report indicating that
11 Ms. Taylor “advised that she has a male ‘blue nose pit’ that is very friendly” in her
12 home).⁵) Ms. Taylor testifies that the officer suggested that Ms. Taylor should have her
13 dog in another room or out of her home during the inspection, but that she would have
14 time to arrange for that because the inspection would be set in advance. (*See id.* ¶ 5.)
15 Ms. Taylor received a letter about the upcoming inspection, but no one from the DOC
16 contacted her to schedule an inspection. (*See id.* ¶ 6.)

17 ⁵ Affidavits or declarations filed in support of or opposition to summary judgment
18 motions “must be made on personal knowledge, set out facts that would be admissible in
19 evidence, and show that the affiant or declarant is competent to testify on the matters stated.”
20 Fed. R. Civ. P. 56(c)(4). The ORP report attached to Ms. Taylor’s declaration is not properly
21 authenticated. (*See, e.g.,* Leanne Taylor Decl. ¶ 4 (stating that the attached ORP report “is the
22 [ORP] plan for my son with written comments from a DOC Counselor” without laying
foundation for Ms. Taylor’s personal knowledge of the ORP report or authenticating the report
as a true and accurate copy).) However, Mr. Goon cured this deficiency by filing a supplemental
declaration from his counsel, Mr. Karp, that indicated that the document attached to Ms. Taylor’s
deposition is a true and correct copy of the ORP report produced by Defendants in their initial
disclosures. (*See* 2d Karp Decl. at 1.) Thus, the court will consider that document.

1 Officer Coleman and another DOC officer, Angel Davis, first attempted to
2 conduct an ORP inspection at Ms. Taylor's residence on November 16, 2017. (*See*
3 Coleman Dep. at 63:6-65:11; *see also* Leanne Taylor Decl. ¶ 8.) Officer Coleman did not
4 call ahead to schedule an appointment with Ms. Taylor. (*See* Leanne Taylor Decl. ¶ 6;
5 Coleman Dep. 81:5-10.) According to Officer Coleman, although he occasionally
6 schedules home visits in advance, it is standard practice to conduct a "random visit"
7 without calling ahead to ensure that the homeowner cannot stage the residence before the
8 inspection. (*See* Coleman Dep. at 68:2-20, 77:15-78:19, 79:12-82:9.) Officer Coleman
9 acknowledges that he knew Ms. Taylor had a dog at her residence prior to his November
10 16, 2017, visit because he had read the ORP file that indicated that Ms. Taylor had
11 informed the DOC that she had a dog at her home.⁶ (*See id.* at 88:12-89:9; *see also*
12 Leanne Taylor Decl. at p.6.) When Officer Coleman approached the front door and
13 knocked, he heard a dog barking from inside Ms. Taylor's residence. (*See* Coleman Dep.
14 at 85:21-24.) Officer Coleman could not see the dog inside the home and could not recall
15 if the barking sounded aggressive or if the dog growled at him, but his impression was
16 that the dog inside the home was "not a small dog." (*See id.* at 85:25-86:8.) No one
17 answered the door when Officer Coleman knocked, so Officer Coleman left his business
18 card behind and left. (*See* Coleman Dep. at 64:3-7, 74:23-77:4, 86:9-24; Leanne Taylor
19 Decl. ¶ 8.)

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21 ⁶ Although the ORP file that Officer Coleman referred to states that there was a "blue
22 nose pit" at Ms. Taylor's home, Officer Coleman testifies only that he knew there was a dog at
the residence. (*See id.* at 88:12-89:9; *see also* Leanne Taylor Decl. at p.6.) He cannot recall
specifically if he knew the dog was a "blue nose pit." (*See* Coleman Dep. at 88:12-89:9.)

1 On November 30, 2017, the day of the shooting, Officer Coleman returned to Ms.
2 Taylor's residence to make another attempt to conduct the ORP inspection with a
3 different DOC officer, Holden Wilkinson. (*See* Am. Compl. ¶¶ 11-12; Answer ¶ 12;
4 Coleman Dep. at 82:10-20.) The officers did not schedule the November 30, 2017, ORP
5 inspection in advance (*see* Leanne Taylor Decl. ¶ 7), and Officer Coleman had not
6 received a call from Ms. Taylor since he left his business card on November 16, 2017,
7 (*see* Coleman Dep. at 90:11-17). Surveillance video footage from Ms. Taylor's residence
8 shows that Officers Coleman and Wilkinson's vehicle arrived in Ms. Taylor's driveway
9 at 10:51:35 a.m. and the officers had exited the vehicle and reached Ms. Taylor's front
10 gate by 10:52:24 a.m. (*See* Clay Decl. ¶ 8, Ex. F ("Surveillance Video") at 10:51:35-
11 10:52:24.) When Officer Coleman approached the gate, he had a firearm, OC spray,
12 handcuffs, and a medical packet on his toolbelt at the time of his visit, but no TASER.⁷
13 (*See* Coleman Dep. at 91:2-13.) Officer Wilkinson carried a TASER, handcuffs, a
14 firearm, a flashlight, OC spray, and a medical kit. (*See* 1st Karp Decl., Ex. D
15 ("Wilkinson Dep.")⁸) at 105:20-107:2.)

16 When Officers Coleman and Wilkinson arrived at the front gate, the officers
17 stayed behind the gate and Officer Coleman whistled and made other noises "to see if
18 there [were] any animals on the scene" or whether "any animals [would] come up to the

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20 ⁷ "OC spray" refers to Oeloresin Capsicum spray, which is commonly known as pepper
spray. (*See* MSJ Resp. at 8; 1st Crosby Decl., Ex. E at 95.)

21 ⁸ Portions of Officer Wilkinson's deposition are also in the record as Exhibit E to Mr.
22 Clay's declaration. (*See* Clay Decl. ¶ 7, Ex. E.) The court cites to Officer Wilkinson's
deposition as "Wilkinson Dep." wherever it appears in the record.

1 gate.” (*See id.* at 99:4-16; Wilkinson Dep. at 72:16-21.⁹) When no animal came to the
2 gate, the officers then entered through the gate at 10:52:29 a.m. and proceeded to the
3 front door (*See* Surveillance Video at 10:52-24-10:52:35 a.m.) Officer Wilkinson closed
4 the front gate behind him at 10:52:35 a.m. (*See* Surveillance Video at 10:52-24-10:52:35
5 a.m.) Because the surveillance footage is fixed on the front gate area and does not show
6 the front door of Ms. Taylor’s home, Officers Coleman and Wilkinson are out of view of
7 the surveillance camera for 21 seconds—from 10:52:38 to 10:52:59 a.m. (*See*
8 Surveillance Video at 10:52:38 to 10:52:59 a.m.)

9 Photographs of Ms. Taylor’s home show that the front door is located inside a
10 “very narrow” covered outdoor hallway or deck at the top of three stairs. (*See* 1st Crosby
11 Decl. at 107-108, 111; 1st Karp Decl., Ex. C (“Robbert Taylor Dep.”¹⁰) at 18:5-7.)
12 Roughly 10 feet to the right of the front door—from the perspective of someone facing
13 the front door from the outdoor hallway—is a separate sliding glass door entrance to Ms.
14 Taylor’s home. (*See* Robbert Taylor Dep. at 26:17-27:9; 1st Crosby Decl. at 108.¹¹)
15 There is approximately 25-30 feet between the sliding glass door and the front gate that

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18 ⁹ Although the surveillance footage from Ms. Taylor’s home does not include audio, the
19 footage shows that Officers Coleman and Wilkinson paused at the front gate for a few seconds
20 and looked around before opening the gate. (*See* Surveillance Video at 10:52:24-10:52:29 a.m.)

21 ¹⁰ Portions of Mr. Taylor’s deposition are also in the record as Exhibit B to Mr. Clay’s
22 declaration. (*See* Clay Decl., ¶ 4, Ex. B.) The court cites to Mr. Taylor’s deposition as “Robbert
Taylor Dep.” wherever it appears in the record.

¹¹ Because the documents attached to Mr. Crosby’s declaration are not demarcated with
authenticating paragraph numbers or exhibit cover sheets, the court cites the page number
supplied by its electronic docketing system.

1 the officers walked through, which means that the front door is about 15-20 feet from the
2 front gate. (*See* Robbert Taylor Dep. at 27:4-14; 1st Crosby Decl. at 107, 111.)

3 The officers testify that they approached the front door and knocked to see if
4 anyone was home. (*See* Coleman Dep. at 99:19-100:3; Wilkinson Dep. at 72:22-73:1.)

5 After knocking, they heard a dog barking “right there at the [front] door” inside Ms.

6 Taylor’s home. (*See* Coleman Dep. at 99:19-100:15, 103:1-3; Wilkinson Dep. at

7 72:22-73:1, 86:11-87:13.) Once the dog began barking, Officer Wilkinson closed the

8 outward-opening screen door and either one or both of the officers placed their hands and

9 feet up against the screen door to prevent the dog from running out the inward-opening

10 front door in the event that someone opened the front door.¹² (*See* Coleman Dep. at

11 100:7-18; Wilkinson Dep. at 72:22-73:7, 88:6-12, 89:2-6.) Officer Wilkinson testifies

12 that one of the officers called inside the home for anyone inside to “secure your dog,” but

13 Officer Coleman does not recall that they had the opportunity to say anything at the front

14 door. (*See* Wilkinson Dep. at 73:8-13, 89:12-90:1; Coleman Dep. at 106:7-12.)

15 Eventually, the barking grew quieter, which suggested to Officer Coleman that someone

16 was home and securing the dog. (*See* Coleman Dep. at 103:1-5, 106:7-107-4.)

17 Regardless, the officers stayed at the front door to make sure it remained secured. (*See*

18 Coleman Dep. at 103:1-5, 107:5-23; Wilkinson Dep. at 86:11-87:13, 89:2-6.)

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¹² Officer Coleman testifies that he believed both he and Officer Wilkinson were at the front door and that they “put both our hands and our feet up against the door.” (*See* Coleman Dep. at 100:7-18.) Officer Wilkinson is certain that he held the door with his hand and foot, but testifies that he cannot recall what Officer Coleman did at the time because that was not something he focused on. (*See* Wilkinson Dep. at 85:17-23, 87:14-89:6.)

1 Unbeknownst to the officers at the time they approached Ms. Taylor's front door,
2 Robbert Taylor, Ms. Taylor's brother, was at Ms. Taylor's home. (*See* Robbert Taylor
3 Dep. at 14:14-22.) Mr. Taylor was asleep in the living room when Shilo woke him up by
4 "pacing back and forth [and] barking." (*See id.* at 14:19-25.) Mr. Taylor got up, looked
5 out a window, and saw a car in the parking space outside Ms. Taylor's front gate. (*See*
6 *id.* at 15:1-6.) Mr. Taylor realized that someone was outside, so he walked over to the
7 sliding glass door, opened it, and "poked [his] head out" to see who was there. (*See id.* at
8 15:4-11.) Mr. Taylor says that he saw Officer Wilkinson standing at the top of the steps
9 next to the front door with his back to the sliding glass door, while Officer Coleman
10 stood about 10 to 15 feet behind Officer Wilkinson. (*See id.* at 15:7-11, 18:24-19:22,
11 21:14-21.) Officer Wilkinson agrees that he stood near the front door with the sliding
12 glass door either behind him or to his side when Mr. Taylor opened the sliding glass door.
13 (*See* Wilkinson Dep. at 90:10-23, 96:25-97:10.) Officer Coleman's deposition testimony
14 does not clearly indicate where he stood when Mr. Taylor opened the sliding glass door,
15 but he does recall that he was at or near the front door with Officer Wilkinson when the
16 officers first heard the dog barking inside Ms. Taylor's home. (*See* Coleman Dep. at
17 100:7-18.)

18 When Mr. Taylor opened the sliding glass door, Shilo exited out that door either at
19 the same time or shortly after Mr. Taylor stepped onto the porch. (*See* Robbert Taylor
20 Dep. at 15:7-16, 16:24-17:6, 18:2-4, 31:25-32:3; Coleman Dep. at 103:1-8; Wilkinson
21 Dep. at 90:24-25.) The three eyewitnesses agree that Shilo ran quickly out the door and
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1 toward the officers who stood nearby. First, Officer Wilkinson testifies that he believed
2 Shilo ran directly at him when he exited the door:

3 **Q. Okay. What was Shiloh doing the moment you saw him?**

A. Pushing past the owner, running at me.

4 **Q. Directly at you?**

A. Yes.

5 **Q. And what was h[is] behavior, his gait, his demeanor --**

A. Barking --

6 **Q. -- as he was approaching you?**

A. -- running very fast towards me.

7 **Q. Anything else you recall?**

8 A. Just it was so quick. I mean, I would guess it was under a half second
9 that it took for the dog to be from the doorway to me; so I don't recollect
almost anything. I saw the dog running out, coming directly at me, and that's
it.

10 (Wilkinson Dep. at 90:24-91:11.) Officer Coleman testifies that Shilo "bolt[ed] out" of
11 the door and ran in his direction:

12 **Q. And then what happened?**

13 A. Then we heard the dog, and all of a sudden the dog's right there at the
14 door. It gets, like, it's going backwards. So now we're under the impression
someone's home; so we're going to stay right here, make sure the door is
secured. That's when I believe the patio door opens up. The dog bolts out
the door barking, running towards me, runs down the stairs.

15 * * *

16 **Q. Okay. So you saw Shiloh. When you first saw Shiloh, what was**
17 **Shiloh doing specifically? What do you remember him doing?**

A. Running towards me.

18 **Q. Was he focused on you?**

A. Yes.

19 (Coleman Dep. at 103:1-8; 108:21:109:1.)

20 Finally, Mr. Taylor agrees that Shilo ran out of the door and "up to" the officers:

21 A. So I came out onto the porch fully, opened it, poked my head out and
22 came out. At the same time, Shilo came out. Shilo ran up to the first guy to

1 greet him, and then just as he was going for the other guy -- I thought it was
2 firecrackers.

3 (Robbert Taylor Dep. at 15:12-16.) Mr. Taylor testifies that Shilo ran at Officers
4 Wilkinson and Coleman to “greet” them or play with them, which was his typical
5 practice.¹³ (See Robbert Taylor Dep. at 15:12-16 (“Shilo ran up to the first guy to greet
6 him”), 20:12-21:2 (“Shilo always comes out and just greets – he wants to play. He thinks
7 it’s playtime. And that’s all he was doing.”), 21:24-22:6 (“What Shilo usually does is he
8 goes out for his ball. He wants to play fetch or something. Tug of war or whatnot. And I
9 believe that’s what he was going for.”).) According to Officer Wilkinson, Mr. Taylor did
10 not say anything to Shilo or to the officers about Shilo after he opened the sliding glass
11 door. (See Wilkinson Dep. at 97:11-24.)

12 Officers Wilkinson and Coleman perceived Shilo’s intent much differently than
13 Mr. Taylor did. Both officers believed that Shilo was a threat to their safety. (See
14 Coleman Dep. at 122:22-123:2 (“At the time I believed I was going to get hurt. . . . I
15 thought I was going to get bit, possibly die.”), 128:7-13 (Q. “In the moment when you
16 first saw Shilo emerge from the slider, you had to have thought to yourself, ‘I need to
17 select a weapon.’ Right? Didn’t you think that?” A. “I thought I need to save myself
18 and my partner. That’s what I was thinking.” Q. “From what?” A. “Great bodily harm
19 or death. That’s what I believed.”); Wilkinson Dep. at 92:25-93:7 (Q. “And so when

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21 ¹³ Mr. Goon, Ms. Taylor, and the owner of the animal shelter that Mr. Goon adopted
22 Shilo from all submitted declarations that attest that Shilo was a friendly, well-socialized dog
with no history of violence. (See Goon Decl. ¶¶ 6-14; Leanne Taylor Decl. ¶ 4; Thomas Decl. ¶¶
2-3.)

1 Shilo is coming down the corridor toward you, did you arm a weapon? Did you step
2 aside? Did you push him away? What did you –” A. “I believed the dog was attacking;
3 so I turned to the side. I believed it was coming at me. I was hoping that it would bite
4 me on my arm or my hand; so I put that arm out to prevent damage to anything more
5 important and drew my TASER and pointed it at the animal.”); Wilkinson Dep. at 95:1-
6 15 (stating that once Shilo passed him, Officer Wilkinson saw that Shilo was attacking
7 Officer Coleman.).

8 When Shilo first exited the sliding glass door, he ran at Officer Wilkinson (*see*
9 Robbert Taylor Dep. at 20:12-16; Wilkinson Dep. at 90:20-91:11), who Mr. Taylor
10 testifies stood about 10 to 15 feet closer to the sliding glass door than Officer Coleman
11 (*see* Robbert Taylor Dep. at 18:24-19:22, 21:14-21). Officer Wilkinson recalls that Shilo
12 barked as he ran out, but Officer Wilkinson could not recall whether Shilo made any
13 other sounds or showed other signs of aggression at that time. (*See* Wilkinson Dep. at
14 91:3-92:12.) Although Mr. Taylor agrees that Shilo ran out of the door and at Officer
15 Wilkinson, he testifies that Shilo did not bark after he ran out of the residence. (Robbert
16 Taylor Dep. at 18:16-23.) As soon as Officer Wilkinson saw Shilo, he testifies that he
17 turned to the side, put one arm out in hopes that Shilo would bite his arm or hand, and
18 drew his TASER and pointed it at Shilo. (*See* Wilkinson Dep. at 92:13-93:7.) After
19 Officer Wilkinson put his arm out, Officer Wilkinson claims that Shilo kept running at
20 him, but did not stop to touch him or sniff him in any way. (*See id.* at 93:15-22.) Mr.
21 Taylor’s testimony conflicts with portions of Officer Wilkinson’s account. Mr. Taylor
22 claims that, when Officer Wilkinson stuck out his hand, Shilo went up to greet or sniff

1 Officer Wilkinson, slowed down, briefly stopped, and “almost [went] down to a sit.”
2 (*See* Robbert Taylor Dep. at 20:12-21:13, 25:23-26:7.) Both Mr. Taylor and Officer
3 Wilkinson agree that this sequence of events unfolded in a matter of seconds, at most.
4 (*See* Robbert Taylor Dep. at 21:3-22:5, 25:23-26:12; Wilkinson Dep. at 90:20-91:11
5 (estimating that it took Shilo “under a half second” to reach Officer Wilkinson from the
6 sliding glass door).)

7 After Shilo moved past Officer Wilkinson, he ran at Officer Coleman. (*See*
8 Wilkinson Dep. at 94:13-95:15, 96:17-19; Robbert Taylor Dep. at 20:12-16, 21:3-21.)
9 Officer Coleman testifies that he fled down the stairs toward the gate and yelled “[s]ecure
10 your dog” as soon as he saw Shilo come out the door. (*See* Coleman Dep. at 103:1-13,
11 105:1-22, 106:7-12 108:21-109:4, 112:10-18.) He claims that he wanted to “get[]
12 distance” on Shilo so he could “see what was going on.” (*See id.* at 103:1-13,
13 108:21-109:4.) While he tried to get away from Shilo, Officer Coleman believes that he
14 was looking at Shilo at a tilt or an angle. (*See id.* at 111:12-23.) Officer Coleman recalls
15 Shilo barked while he ran at him, but Officer Coleman could not remember whether Shilo
16 made any other sounds or engaged in aggressive behaviors because his focus was on
17 trying to distance himself from Shilo. (*See id.* at 108:21-110:10.)

18 Mr. Taylor claims that he had difficulty seeing Officer Coleman from his vantage
19 point due to Officer Coleman’s position behind Officer Wilkinson, but Mr. Taylor
20 thought he saw Officer Coleman fall down or stumble briefly as he fled from Shilo. (*See*
21 Robbert Taylor Dep. at 19:23-20:11, 23:6-10.) Mr. Taylor did not hear Officer Coleman
22 yell anything as Shilo approached Officer Coleman. (*See id.* at 22:11-17.) Officer

1 Wilkinson claims that he looked briefly toward Mr. Taylor after Shilo ran past him before
2 turning his focus back to Shilo and Officer Coleman. (*See* Wilkinson Dep. at 96:25-
3 97:12.) Officer Wilkinson testifies that it looked like Shilo was “running at [Officer
4 Coleman] and moving in an aggressive manner towards him.” (*See id.* at 95:3-23.)

5 The eyewitnesses agree that Officer Coleman fired two shots at Shilo. (*See*
6 Coleman Dep. at 103:1-15; Wilkinson Dep. at 96:13-15; Robbert Taylor Dep. at 15:12-
7 20, 23:6-13.) The surveillance video captures the second shot, but not the first. (*See*
8 Surveillance Video at 10:52:38-10:53:02 a.m.) Although Officer Coleman does not
9 remember exactly where he was when he fired the first shot at Shilo, he testifies that he
10 believes he was close to the front gate but had not yet made contact with the gate.¹⁴ (*See*
11 Coleman Dep. at 110:24-112:18.) Officer Coleman also cannot recall what direction his
12 body faced when he fired at Shilo or what angle he pointed his firearm at when he shot at
13 Shilo, but he claims that Shilo was in the “walkway” when he fired the first shot at him.
14 (*See id.* at 114:6-116:10.) Officer Coleman estimates that Shilo was “real close” to
15 him—perhaps only “[a] couple feet away”—when he fired the first shot, which is
16 consistent with Officer Wilkinson’s testimony. (*See id.* at 117:3-7, 117:12-16; Wilkinson
17 Dep. at 101:3-12.) Mr. Taylor claims that Shilo was still on the stairs in the covered
18 walkway, roughly 15 feet from Officer Coleman, when Officer Coleman fired his first
19 shot. (*See* Robbert Taylor Dep. at 25:13-26:16.) Officer Coleman believes that he hit
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21 ¹⁴ Officer Coleman’s testimony about his location when he fired the first shot is
22 consistent with Officer Wilkinson’s recollection and the surveillance footage—which would
have captured both of Officer Coleman’s shots had they both been fired from the front gate. (*See*
Wilkinson Dep. at 98:7-12; Surveillance Video at 10:52:38-10:53:02 a.m.)

1 Shilo with the first shot, and both Officer Wilkinson and Mr. Taylor recall that Shilo
2 yelped after the first shot rang out. (*See* Coleman Dep. at 119:13-20; Wilkinson Dep. at
3 99:5-13; Robbert Taylor Dep. at 15:12-20, 27:23-26:16, 33:8-12.)

4 The surveillance footage shows that Officer Coleman fired the second shot at
5 Shilo at 10:53:01 a.m.—no more than 30 seconds after Officers Coleman and Wilkinson
6 walked through the front gate. (*See* Surveillance Video at 10:52:31-10:53:01 a.m.) As
7 shown on the video footage, Officer Coleman stumbled backward toward the front gate at
8 10:53:00 a.m. with a clipboard in his left hand and a firearm in his right hand. (*See id.* at
9 10:52:59-10:53:03 a.m.) Officer Coleman then collided with the fence less than a second
10 later at 10:53:00 a.m., dropped his clipboard, gathered himself briefly, and fired a second
11 shot at 10:53:01 a.m. (*See id.*) Shilo was not within the area captured by the video
12 footage when Officer Coleman fired, but he ran into the frame after Officer Coleman
13 fired—less than a second later. (*See id.*) Mr. Taylor testifies that, after the first shot, he
14 believes Shilo was running at Officer Coleman to try to “make the corner” of the home
15 and get away. (*See* Robbert Taylor Dep. at 24:21-25:6, 29:13-30:12.) The “corner” of
16 Ms. Taylor’s home that Mr. Taylor refers to was only five feet from Officer Coleman at
17 the time Officer Coleman fired the second shot. (*See id.* at 28:8-16.) Thus, the video and
18 testimony suggest that Shilo was still running at Officer Coleman and no more than five
19 feet away from him when Officer Coleman fired the second shot. (*See* Surveillance
20 Video at 10:52:59-10:53:03 a.m.; Wilkinson Dep. at 101:6-12; Coleman Dep. at 117:3-
21 16; Robbert Taylor Dep. at 28:8-16.) After Officer Coleman fired the second shot, Shilo

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1 peeled off to Officer Coleman’s left and ran out of the frame, where he ultimately died.
2 (*See* Surveillance Video at 10:52:59-10:53:03 a.m.; Robbert Taylor Dep. at 35:3-16.)

3 Officer Coleman testifies that he fired the second shot at Shilo—instead of using
4 OC spray—because he still feared for his life and believed Shilo was still coming at him.
5 (*See* Coleman Dep. at 119:19-121:1, 122:22-123:2, 128:7-13.) Officer Coleman claims
6 that Shilo continued barking after the first shot, but he cannot recall whether Shilo made
7 any other aggressive behaviors or sounds. (*See id.* at 122:1-21.) Although Officer
8 Coleman cannot remember how much time elapsed between the two shots, Mr. Taylor
9 testifies that only one to three seconds elapsed between the shots, and Officer Wilkinson
10 estimates that only “a couple seconds” elapsed between the shots. (*See id.* at 118:9-20;
11 Robbert Taylor Dep. at 23:6-24:15; Wilkinson Dep. at 98:13-19.) Mr. Taylor testifies
12 that the entire sequence, from the time that Mr. Taylor poked his head out of the sliding
13 glass door to the end of the second shot, took “maybe five or six seconds.” (*See* Robbert
14 Taylor Dep. at 34:7-12.) After Officer Coleman fired the shots, the officers exited out the
15 front gate and waited for other law enforcement to arrive. (*See* Surveillance Video at
16 10:53:00-11:00:00; Robbert Taylor Decl. at 35:22-39:9.)

17 The parties agree that Officer Coleman caused Shilo’s death. (Am. Compl. ¶ 18;
18 Answer ¶ 18; *see also* Necropsy Rpt. at 10.) Dr. Jennifer G. Ward conducted a necropsy
19 on Shilo after the shooting and concluded that Shilo had been hit by two gunshots. (*See*
20 Necropsy Rpt. at 9-10.) The entry wound for the non-fatal shot was on Shilo’s right
21 caudal tarsus, with an exit wound on the craniomedial tarsus. (*See id.*) Dr. Ward
22 concluded that the path of the projectile was “back to front, right to left (approximately

43 degrees), and downward (approximately 8 degrees).” (*See id.*) The fatal shot entered Shilo through the left thorax and did not leave an exit wound. (*See id.* at 9-12.) The path of that projectile was “front to back, left to right (approximately 37 degrees), and downward (approximately 11 degrees).” (*See id.* at 9.) The parties agree that this fatal shot was the second shot that Officer Coleman fired. (*See* MSJ at 4; MSJ Resp. at 3.)

III. ANALYSIS

Mr. Goon filed one federal cause of action against Officer Coleman for constitutional violations under 42 U.S.C. § 1983 and four state law causes of action against Officer Coleman, the State, and the DOC for conversion, property damage, statutory or common law nuisance, and negligence. (*See* Am. Compl. ¶¶ 49-53.) Defendants move for summary judgment on all of Mr. Goon’s causes of action. (*See* MSJ at 1.) Defendants argue that Officer Coleman is entitled to qualified immunity against Mr. Goon’s Section 1983 claim (*see id.* at 6-11), and they argue that they are entitled to summary judgment on each of the state law claims for independent reasons (*see id.* at 11-16). Mr. Goon argues that summary judgment is not warranted on his federal or state claims (*see* MSJ Resp.), and separately moves to exclude portions of the testimony of the Defendants’ proposed canine expert, Mr. Berman (*see generally* MTE). The court first addresses Defendants’ summary judgment motion before turning to the motion to exclude Mr. Berman.

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1 **A. Defendant’s Motion for Summary Judgment**

2 1. Summary Judgment Standard

3 Summary judgment is appropriate if the evidence, when viewed in the light most
4 favorable to the non-moving party, demonstrates “that there is no genuine dispute as to
5 any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ.
6 P. 56(a); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Galen v. Cty. of L.A.*,
7 477 F.3d 652, 658 (9th Cir. 2007). A fact is “material” if it might affect the outcome of
8 the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A factual dispute is
9 “‘genuine’ only if there is sufficient evidence for a reasonable fact finder to find for the
10 non-moving party.” *Far Out Prods., Inc. v. Oskar*, 247 F.3d 986, 992 (9th Cir. 2001)
11 (citing *Liberty Lobby*, 477 U.S. at 248-49).

12 The moving party bears the initial burden of showing there is no genuine issue of
13 material fact and that he or she is entitled to prevail as a matter of law. *Celotex*, 477 U.S.
14 at 323. If the moving party does not bear the ultimate burden of persuasion at trial, it can
15 show the absence of an issue of material fact in two ways: (1) by producing evidence
16 negating an essential element of the nonmoving party’s case, or (2) by showing that the
17 nonmoving party lacks evidence of an essential element of its claim or defense. *Nissan*
18 *Fire & Marine Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1106 (9th Cir. 2000).

19 The court is “required to view the facts and draw reasonable inferences in the light
20 most favorable to the [non-moving] party.” *Scott v. Harris*, 550 U.S. 372, 378 (2007).
21 The court may not weigh evidence or make credibility determinations in analyzing a
22 motion for summary judgment because these are “jury functions, not those of a judge.”

1 *Liberty Lobby*, 477 U.S. at 249-50. Nevertheless, the nonmoving party “must do more
2 than simply show that there is some metaphysical doubt as to the material facts
3 Where the record taken as a whole could not lead a rational trier of fact to find for the
4 nonmoving party, there is no genuine issue for trial.” *Scott*, 550 U.S. at 380 (internal
5 quotation marks omitted) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*,
6 475 U.S. 574, 586-87 (1986)). “Conclusory allegations unsupported by factual data
7 cannot defeat summary judgment.” *Rivera v. Nat’l R.R. Passenger Corp.*, 331 F.3d 1074,
8 1078 (9th Cir. 2003). Nor can a party “defeat summary judgment with allegations in the
9 complaint, or with unsupported conjecture or conclusory statements.” *Hernandez v.*
10 *Spacelabs Med. Inc.*, 343 F.3d 1107, 1112 (9th Cir. 2003).

11 2. Qualified Immunity Standard

12 “Qualified immunity attaches when an official’s conduct does not violate clearly
13 established statutory or constitutional rights of which a reasonable person would have
14 known.” *Kisela v. Hughes*, --- U.S. ---, 138 S. Ct. 1148, 1152 (2018). In determining
15 whether a government employee is entitled to qualified immunity, the court must decide:
16 (1) whether the facts that the plaintiff alleges assert a violation of a constitutional right;
17 and (2) whether the right at issue was “clearly established” at the time the defendant
18 engaged in the misconduct. *Pearson v. Callahan*, 555 U.S. 223, 232 (2009) (discussing
19 *Saucier v. Katz*, 533 U.S. 194, 201 (2001)). Courts have discretion to decide which of the
20 two prongs of this test to address first. *See id* at 236; *Chism v. Washington*, 661 F.3d
21 380, 386 (9th Cir. 2011). Where a “genuine issue of material fact exists that prevents a

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determination of qualified immunity at summary judgment, the case must proceed to trial.” *Bonivert v. Clarkson*, 883 F.3d 865, 871-72 (9th Cir. 2017).

For a constitutional right to be clearly established, a court must define the right at issue with “specificity” and “not . . . ‘at a high level of generality.’” *City of Escondido, Cal. v. Emmons*, --- U.S. ---, 139 S. Ct. 500, 503 (2019) (quoting *Kisela*, 138 S. Ct. at 1152). The plaintiff “bears the burden of showing that the rights allegedly violated were clearly established.” *Shafer v. Cty. of Santa Barbara*, 868 F.3d 1110, 1118 (9th Cir. 2017) (internal quotation marks and citation omitted). “While there does not have to be a case directly on point, existing precedent must place the lawfulness of the particular [action] beyond debate.” *Emmons*, 139 S. Ct. at 504 (quoting *Dist. of Columbia v. Wesby*, --- U.S. ---, 138 S. Ct. 577, 581 (2018) (internal quotation marks omitted)); *see Jessop v. City of Fresno*, 936 F.3d 937, 940-41 (9th Cir. 2019) (“The contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right.”) (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)). When the only cases a plaintiff cites are factually distinguishable, or provide “nothing more than a general principle,” the public official is entitled to qualified immunity “except in the ‘rare obvious case’ in which a general legal principle makes the unlawfulness of the [official’s] conduct clear despite a lack of precedent addressing similar circumstances.” *West v. City of Caldwell*, 931 F.3d 978, 983, 985 (9th Cir. 2019) (quoting *Emmons*, 139 S. Ct. at 503-04).

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1 3. Mr. Goon’s 42 U.S.C. § 1983 Claim

2 Mr. Goon’s claim under 42 U.S.C. § 1983 is based on Officer Coleman’s killing of
3 Shilo, which is a seizure under the Fourth Amendment. (*See* Compl. ¶ 49; MSJ Resp. at
4 14-17); *see also San Jose Charter of Hells Angels Motorcycle Club v. City of San Jose*,
5 402 F.3d 962, 975 (9th Cir. 2005) (“‘The killing of [a] dog is a destruction recognized as
6 a seizure under the Fourth Amendment’ and can constitute a cognizable claim under §
7 1983.” (quoting *Fuller v. Vines*, 36 F.3d 65, 68 (9th Cir. 1994), *overruled on other*
8 *grounds, Robinson v. Solano County*, 278 F.3d 1007, 1013 (9th Cir.2002))). It is well-
9 established that “[r]easonableness is the touchstone of any seizure under the Fourth
10 Amendment.” *Id.* Thus, for purposes of the first prong of the qualified immunity
11 analysis on Mr. Goon’s § 1983 claim, the question is whether the shooting of Shilo was
12 “reasonable under the circumstances,” *see id.*, while the key question for the second
13 prong is whether it was clearly established at the time of the shooting that Officer
14 Coleman’s conduct constituted an unreasonable Fourth Amendment seizure, *see id.* at
15 977.

16 The court first considers the clearly established prong of the qualified immunity
17 analysis. *See Pearson*, 555 U.S. at 236; *Chism*, 661 F.3d at 386. Because the clearly
18 established analysis focuses on “settled law,” the right at issue “must be clearly
19 established by controlling authority or a robust consensus of cases of persuasive
20 authority.” *Tuuamalemallo v. Greene*, --- F.3d ---, No. 18-15665, 2019 WL 7161278, at
21 *3 (9th Cir. Dec. 24, 2019) (citing *Wesby*, --- U.S. ---, 138 S. Ct. at 590-91 (2018)). The
22 court and the parties have identified six relevant Ninth Circuit opinions, a handful of

1 out-of-circuit appellate court opinions, and a number of district court opinions that speak
2 to the issue presented here—law enforcement use of force on dogs.¹⁵ The court first
3 assesses whether there is any clearly established law under controlling Ninth Circuit
4 authority before turning to the question of whether there is a “robust consensus of cases
5 of persuasive authority” outside of the Ninth Circuit. *See id.*

6 First, in *Fuller v. Vines*, the plaintiffs alleged that their pet dog “stood up” when
7 law enforcement officers passed by the plaintiffs’ yard, but the law enforcement officers
8 alleged that the dog charged at them while barking and growling. 36 F.3d at 66.
9 Although one of the plaintiffs “pleaded with the officers not to shoot his dog and told
10 them he could control [the dog],” the officers shot the dog twice, which killed him. *See*
11 *id.* at 66. The plaintiffs initially pleaded a due process claim, but sought leave to amend
12 to add a claim that the killing of their dog was an unlawful seizure under the Fourth
13 Amendment. *See id.* at 67-68. The *Ninth* Circuit held that the trial court erred in failing
14 to grant leave to amend because “[t]he killing of a dog is a destruction recognized as a
15 seizure under the Forth Amendment.” *See id.* at 68.

16 Second, in *San Jose Charter of Hells Angels Motorcycle Club v. City of San Jose*,
17 law enforcement officers shot and killed three different dogs at two different properties
18 while executing high-risk search warrants at residences of members of the Hells Angels.
19 *See* 402 F.3d at 965. The Ninth Circuit specifically noted that, although law enforcement
20 had a week of advanced notice of the presence of aggressive dogs on properties that they

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22 ¹⁵ The parties did not identify any relevant Washington decisions (*see generally* MSJ;
MSJ Resp.; MSJ Reply) and the court has not identified any.

1 intended to enter and search without the owners’ knowledge or permission, “the officers
2 developed no realistic plan other than shooting the dogs while serving the search
3 warrants.” *See id.* at 976. Although the Ninth Circuit stated that “the governmental
4 interest of safety might have provided a sound justification for the intrusion had the
5 officers been surprised by the presence of the dogs,” the court ultimately found that the
6 officers’ failure to create a non-lethal plan to control the dogs left them “without any
7 option but to kill the dogs in the event they—quite predictably—attempted to guard the
8 home from invasion.” *See id.* at 977. Thus, the court held that the search was
9 unreasonable under the Fourth Amendment, and then concluded that it was clearly
10 established that “that the Fourth Amendment forbids the killing of a person’s dog . . .
11 when that destruction is unnecessary—i.e., when less intrusive, or less destructive,
12 alternatives exist.” *See id.* at 977-78. More specifically, the court concluded that—in the
13 context of the execution of a high-risk search warrant—“[a] reasonable officer should
14 have known that to create a plan to enter the perimeter of a person’s property, knowing
15 all the while about the presence of dogs on the property, without considering a method
16 for subduing the dogs besides killing them, would violate the Fourth Amendment.” *See*
17 *id.* at 978.

18 Third, in *Criscuolo v. Grant County*, the Ninth Circuit reversed a trial court’s grant
19 of summary judgment in favor of a law enforcement officer who shot a dog who may
20 have been attacking the officer’s police dog. *See* 540 F. App’x 562, 563 (9th Cir. 2013).
21 The Ninth Circuit noted that the facts taken in the light most favorable to the plaintiff
22 showed (1) the dog “was not springing toward [the officer’s police dog],” (2) the dog

1 “was either stationary or retreating at a distance of 10-20 feet from [the officer and his
2 police dog],” and (3) the owner was “one to two feet away and about to leash [the dog].”
3 *See id.* The district court opinion elaborated that the plaintiff testified that the officer
4 kicked his dog three times while the plaintiff’s dog was attacking the officer’s dog, and
5 the third kick sent the dog retreating to the plaintiff. *See Criscuolo v. Grant Cty.*, No.
6 CV-10-470-LRS, 2012 WL 1200563, at *5-6 (E.D. Wash. Apr. 9, 2012). During the
7 retreat, the officer shot the plaintiff’s dog. *See id.*

8 In light of these factual inferences, the Ninth Circuit concluded that the dog that
9 was killed “posed no imminent threat” to the officer’s police dog, such that the officer
10 “did not need to make any-split second decision” to protect his dog. *See* 540 F. App’x at
11 563 (citations omitted). Further, the court cited *Hells Angels*, and noted that it was
12 clearly established that “the Fourth Amendment forbids the killing of a person’s dog . . .
13 when that destruction is unnecessary—i.e., when less intrusive, or less destructive,
14 alternatives exist.” *See id.* at 564. The court found that this case did not fall “within the
15 hazy spectrum between unreasonable and reasonable seizures” because the dog was
16 retreating when it was shot and killed and the dog’s owner was trying to regain control of
17 the dog. *See id.* Finally, the court concluded that it was “clearly established that it is
18 unreasonable to shoot an unleashed dog—even if it surprises an officer on public
19 property—if it poses no imminent or obvious threat, its owner is in close proximity and
20 desirous of obtaining custody, and deadly force is avoidable.” *See id.* (citations omitted).

21 Fourth, *Thurston v. City of North Las Vegas Police Department*, like *Hells Angels*,
22 dealt with the shooting of dogs during the execution of a high-risk search warrant. *See*

1 552 F. App'x 640, 641-42 (9th Cir. 2014). In *Thurston*, the court concluded that the
2 search was unreasonable because (1) the police waited 20 minutes after entering the
3 home before firing on the dogs on the property without any explanation as to why the
4 officers failed to summon animal control before the shooting occurred; (2) there was a
5 genuine dispute of fact as to whether the dogs attacked the officers due to the owner's
6 testimony that the dogs were behaving pleasantly before the attack; and (3) one of the
7 officers testified that department policy dictated attendance and participation of animal
8 control when police know that an animal is inside a home. *See id.* at 642. The court also
9 held that the officers' seizure violated the clearly established law articulated in *Hells*
10 *Angels* that "a reasonable officer 'should have known that to create a plan to enter the
11 perimeter of a person's property, knowing all the while about the presence of dogs on the
12 property, without considering a method of subduing the dogs besides killing them, would
13 violate the Fourth Amendment.'" *See id.* at 643 (quoting *Hells Angels*, 402 F.3d at 978).

14 Fifth, in *Wickersham v. Washington*, the Ninth Circuit summarily affirmed the trial
15 court's finding that a law enforcement officer was entitled to qualified immunity where
16 the officer shot a dog that "lunged at" the officer. 694 F. App'x 559, 560 (9th Cir. 2017).
17 The court also concluded that there was no clearly established law indicating that the
18 officer's behavior ran afoul of the Fourth Amendment. *See id.* The district court opinion
19 that the Ninth Circuit affirmed sheds light on the facts of the shooting. *See Wickersham*
20 *v. Washington*, No. C13-01778JCC, 2015 WL 224810 (W.D. Wash. Jan. 15, 2015). In
21 that case, an officer with the Washington Department of Fish and Wildlife spotted a
22 woman fishing off a dock and drove around to the driveway associated with the dock to

1 check the woman's license. *See id.* at *1. When the officer failed to find the woman on
2 the dock, she went to the house nearby to try to locate the woman who she had seen
3 fishing. *See id.* At the house, she walked up to the home after she heard yelling and
4 announced her presence multiple times before someone inside the house responded. *See*
5 *id.* at *2. Seconds later, a 70-80 pound Doberman appeared and ran down the stairs at the
6 officer. *See id.* The dog had a shock collar on and bore its teeth at the officer, who
7 yelled to the dog's owner to secure the dog. *See id.* But the dog approached her and was
8 within a few feet of the officer within two or three seconds, so the officer fired two
9 rounds at the dog because she felt it was going to attack her. *See id.* On these facts, the
10 Ninth Circuit concluded that the seizure was reasonable and that there was no clearly
11 established law holding that the officer's conduct violated the Fourth Amendment. *See*
12 *Wickersham*, 694 F. App'x at 560.

13 Finally, in *Patino v. Las Vegas Metro. Police Department*, the Ninth Circuit held
14 that it was reasonable for an officer to use deadly force on charging, 120-pound pit bull
15 that charged at the officer in a back yard that the officer entered after hearing a gun shot
16 and moaning noises in the yard. *See* 706 F. App'x 427 (9th Cir. 2017). The court also
17 distinguished the emergency context the officer faced from the high-risk search warrant
18 entry in *Hells Angels* and concluded that no clearly established law prohibited the
19 officer's response to the emergency situation in this case. *See id.* As with *Wickersham*,
20 the trial court's decision in *Patino* is instructive. *See Patino v. Las Vegas Metro. Police*
21 *Dep't*, 207 F. Supp. 3d 1158, 1164-66 (D. Nev. 2016). The trial court found that the
22 search was reasonable after specifically noting that (1) the officer had roughly five

1 seconds to react to a 120 pound pit bull, (2) the dog was running at him aggressively, (3)
2 the other officer on scene also drew a weapon and perceived the dog to be a threat, (4) the
3 officer yelled at the dog to stop, and (5) the officer shot and killed the dog when it was
4 within two feet of him. *See id.* at 1164. The trial court also distinguished *Hells Angels*
5 based on the exigent circumstances faced in this case compared to the time that the
6 officers in *Hells Angels* had to plan for the dogs on the property. *See id.* at 1165-66. On
7 these facts, the Ninth Circuit affirmed and found that the seizure was reasonable and did
8 not violate any clearly established rights.¹⁶ *See Patino*, 706 F. App'x at 427.

9 The controlling cases detailed above do not place the lawfulness of Officer
10 Coleman's conduct "beyond debate." *Emmons*, 139 S. Ct. at 504 (citations omitted). To
11 the contrary, the cases underscore that the controlling law on the use of force against dogs
12 in unexpected circumstances is unsettled and highly fact-specific. Although *Fuller* likely
13 established the rule in the Ninth Circuit that the killing of a dog is a seizure under the
14 Fourth Amendment, that case does not decide the question of whether Officer Coleman's
15 seizure was reasonable. *See Fuller*, 36 F.3d at 66-68. The owner of the dog in *Fuller*
16 testified that his dog merely "stood up" when the officers walked by and that he "pleaded
17 with the officers not to shoot his dog and told the officers he could control the dog." *See*

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20 ¹⁶ Although the Ninth Circuit's opinion in *Patino* was not issued until December 15,
21 2017, *see* 706 F. App'x at 427, which was two weeks after Officer Coleman shot Shilo, the
22 court's decision to affirm the trial court on the clearly established prong is still instructive on the
state of clearly established law in the Ninth Circuit. The shooting in *Patino* occurred on January
6, 2013. *See* 207 F. Supp. 3d at 1161. The Ninth Circuit's conclusion that there was no clearly
established law that prohibited the officer's shooting on that date is relevant to the state of the
clearly established law during Officer Coleman's shooting on November 30, 2017.

1 *id.* at 66. Here, although the parties dispute Shilo’s intent in running at the officers, there
2 is no dispute that he ran at them unexpectedly from a side door that was only 10 feet
3 away from where the officers stood. (Wilkinson Dep. at 90:24-91:11; Coleman Dep. at
4 103:1-8; Robbert Taylor Dep. at 15:12-16, 26:17-27:9.) There is also no evidence that
5 Mr. Taylor made an effort to try to control Shilo or speak to the officers about Shilo after
6 Shilo exited the sliding glass door. (See Wilkinson Dep. at 97:11-24.) Thus, *Fuller* is too
7 factually disparate to provide fair warning to Officer Coleman that his conduct was
8 unlawful.

9 The central problem with *Hells Angels* is that it is not clear whether that case
10 applies to the type of home inspection that Officer Coleman intended to conduct on
11 November 30, 2017. *Hells Angels* established the general standard “that the Fourth
12 Amendment forbids the killing of a person’s dog . . . when that destruction is
13 unnecessary—i.e., when less intrusive, or less destructive, alternatives exist.” See 402
14 F.3d at 977-78. The court further specified that “[a] reasonable officer should have
15 known that to create a plan to enter the perimeter of a person’s property, knowing all the
16 while about the presence of dogs on the property, without considering a method for
17 subduing the dogs besides killing them, would violate the Fourth Amendment.” See
18 *Hells Angels*, 402 F.3d at 978. Although these rules articulate clearly established law in
19 the context of law enforcement execution of search warrants, they are inapplicable to the
20 facts of this case. The officers in *Hells Angels* were planning to execute high-risk search
21 warrants at 7:00 a.m. on properties that contained guard dogs. See *id.* at 967-969. The
22 officers killed one dog while sweeping through the backyard of a home with guns drawn,

1 *see id.* at 968, and the officers killed two other dogs by shooting them through a fence in
2 order to gain access to a yard, *see id.* at 969. Although Officer Coleman knew that there
3 was a dog on Ms. Taylor’s property, his plan to “enter” Mr. Taylor’s property was to
4 knock on the front door to see if anyone was home who could supervise his ORP
5 inspection of the home, which is substantially different than the plan in *Hells Angels* to
6 give brief “knock-notice” before forcefully entering and securing homes without the
7 owners’ consent. *See id.* at 967-69, 976-78. *Hells Angels* cannot be read so broadly as to
8 clearly establish that an officer violates the Fourth Amendment by approaching and
9 knocking on the front door of a home without a non-lethal plan to subdue animals that the
10 officer knows are inside—even where the officer has no intention of entering the home
11 without permission and supervision from someone inside.¹⁷ *See, e.g., Patino*, 706 F.
12 App’x at 428 (finding that *Hells Angels* was inapplicable where officer “was not
13 engaging in the calculated execution of a warrant”).

14 *Thurston* is inapposite for the same reason as *Hells Angels*—Officer Coleman was
15 not conducting a high-risk search warrant when he encountered Shilo. *See* 552 F. App’x
16 640. The officers in *Thurston* operated under a policy that required them to work with
17 animal control, and the officers had 20 minutes after entering the home to summon
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19 ¹⁷ Moreover, even if *Hells Angels* clearly established that Officer Coleman had to have a
20 non-lethal plan to subdue Shilo, the court notes that the officers had a plan that was foiled by
21 Shilo’s unexpected exit from a side door. Officer Coleman whistled and made noises at the gate
22 to draw out any animals in the yard (*see* Coleman Dep. at 99:4-16; Wilkinson Dep. at 72:16-21),
and the officers braced the screen door with their hands and feet to prevent Shilo from exiting
unexpectedly (*see* Coleman Dep. at 100:7-18; Wilkinson Dep. at 72:22-73:7, 88:6-12, 89:2-6).
Mr. Goon has not cited any authority that clearly establishes that Officer Coleman was required
to do more than that in the context of this type of entry onto Ms. Taylor’s property.

1 animal control to assist with their search warrant. *See id.* at 641-42. Mr. Goon has not
2 cited any evidence showing that Officer Coleman was required to contact animal control
3 prior to visiting Ms. Taylor’s residence (*see* 1st Karp Decl., Ex. B at 72-82), and, unlike
4 the officers in *Thurston*, Officer Coleman had “maybe five or six seconds” to react to
5 Shilo once Shilo unexpectedly ran out of the side door, (*see* Robbert Taylor Dep. at 34:7-
6 12). *Thurston* builds on the contours of the controlling Fourth Amendment law identified
7 in *Hells Angels* that requires officers to make non-lethal plans to control dogs when the
8 officers anticipate that they may encounter dogs during the execution of high-risk search
9 warrants that require that they enter and secure homes without the owners’ consent. *See*
10 *Hells Angels*, 402 F.3d at 978; *Thurston*, 552 F. App’x at 643 (citing *Hells Angels*). But
11 that clearly established law does not speak to the reasonableness of Officer Coleman’s
12 reaction to Shilo’s unexpected exit from a side door during an otherwise benign home
13 visit.

14 The three remaining Ninth Circuit cases, *Criscuolo*, *Wickersham*, and *Patino*, are
15 more useful because each of those cases deal with dog encounters that the officers could
16 not anticipate. *See Criscuolo*, 540 F. App’x at 563-64; *Criscuolo*, 2012 WL 1200563 at
17 *5-6; *Wickersham*, 694 F. App’x at 560; *Wickersham*, 2015 WL 224810 at *1-2; *Patino*,
18 706 F. App’x at 427; *Patino*, 207 F. Supp. 3d at 1164. The facts and holdings in these
19 cases show that the contours of what is or is not reasonable in this context is far from
20 clearly established. First, in *Criscuolo*, the Ninth Circuit noted that testimony suggested
21 that when the officer shot and killed the dog, the dog was “stationary or retreating at a
22 distance of 10-20 feet” and its owner was only “one to two feet away and about to leash

1 [the dog].” *See Criscuolo*, 540 F. App’x at 563. According to the plaintiff, the officer
2 shot his dog after the dog retreated and tried to return to the plaintiff after the officer
3 kicked his dog three times. *Criscuolo*, 2012 WL 1200563 at *5-6. Given those facts, the
4 Ninth Circuit concluded that it was “clearly established that it is unreasonable to shoot an
5 unleashed dog—even if it surprises an officer on public property—if it poses no
6 imminent or obvious threat, its owner is in close proximity and desirous of obtaining
7 custody, and deadly force is avoidable.” *See id.*

8 There are significant factual differences between the shootings in this case and
9 *Criscuolo*. When viewed in the light most favorable to Mr. Goon, a reasonable juror
10 could conclude that the first shot Officer Coleman fired bore similarities to the fatal shots
11 fired in *Criscuolo*. *See id.* Although none of the eyewitnesses testified that Shilo was
12 moving away or retreating from Officer Coleman when Officer Coleman fired the first
13 shot, the necropsy report concludes that that shot hit Shilo at a 43-degree angle in the
14 back of the right leg—which is consistent with Mr. Goon’s theory that Shilo was not
15 facing Officer Coleman when Officer Coleman shot him the first time. (*See* MSJ Resp.
16 at 11; Necropsy Rpt. at 9-10 (noting that the entry wound from the non-fatal shot was on
17 Shilo’s right caudal tarsus and that the path of the projectile was “back to front, right to
18 left (approximately 43 degrees)”). Additionally, Mr. Goon claims Officer Coleman was
19 about 15 feet away from Shilo when that shot was fired. (*See* Robbert Taylor Dep. at
20 25:13-26:16.) Even so, the eyewitness testimony, necropsy report, and surveillance video
21 all show that Shilo ran directly at Officer Coleman and was no more than a few feet away
22 from Officer Coleman when Officer Coleman fired the second shot that hit Shilo in the

1 left shoulder and ultimately killed him.¹⁸ (See Surveillance Video at 10:52:59-10:53:03
2 a.m.; Wilkinson Dep. at 95:3-23; Coleman Dep. at 119:19-121:1, 122:22-123:2, 128:7-
3 13; Necropsy Rpt. at 9-12.) *Criscuolo* does not speak to the reasonableness of Officer
4 Coleman’s conduct in firing the second shot—the one that ultimately killed Shilo and, as
5 such, constituted the seizure that Mr. Goon takes issue with (see MSJ Resp. at 17 (“[T]he
6 law has been long-settled (nearly 20 years in the 9th Circuit) that killing a dog
7 unnecessarily is a Fourth Amendment seizure.”)).¹⁹

8 The final two Ninth Circuit cases, *Wickersham* and *Patino*, muddy the water by
9 concluding that officers can be entitled to leeway when they encounter dogs under

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11 ¹⁸ Mr. Goon’s argument that Shilo was well-socialized and ran at Officer Coleman in
12 order to get around the corner of the house to get to safety—which the court credits for purposes
13 of summary judgment—is of no import. The undisputed evidence shows that Shilo ran at Officer
14 Coleman and was mere feet away from him at the time Officer Coleman shot him. (See
15 Surveillance Video at 10:52:59-10:53:03 a.m.; Wilkinson Dep. at 95:3-23; Coleman Dep. at
16 119:19-121:1, 122:22-123:2, 128:7-13; Necropsy Rpt. at 9-12.) Even if Shilo had no intent to
harm Officer Coleman in that moment, Officer Coleman could not have known Shilo’s intent.
See *Niesen v. Garcia*, No. 2:14-2921 WBS CKD, 2016 WL 4126382, at *10 (E.D. Cal. July 5,
2016) (“Unlike people, dogs can never state their ‘intent’ and, while an owner of a dog may
develop such a bond that allows her to better predict what the animal might do based on its
behavior, a dog’s behavior can never be predicted with certainty and none of the Deputies were
familiar with plaintiff’s dogs so as to give them any insight into their tendencies.”).

17 ¹⁹ Although the Ninth Circuit has held that if “an officer intentionally or recklessly
18 provokes a violent response, and the provocation is an independent constitutional violation, that
19 provocation may render the officer’s otherwise reasonable defensive use of force unreasonable as
20 a matter of law,” see *Billington v. Smith*, 292 F.3d 1177 (9th Cir. 2002), Mr. Goon does not
21 argue that this doctrine applies to Officer Coleman’s actions. (See generally MSJ Resp.)
22 Moreover, even if Mr. Goon had made such an argument, the court would conclude that it is not
clearly established that the provocation rule articulated in *Billington* applies to dogs. See *Birkes*
v. Tillamook Cty., No. 09-CV-1084-AC, 2011 WL 1792135, at *7 (D. Or. May 10, 2011)
 (“[N]othing in the cases cited by Plaintiffs suggests that the analysis applied in [*Billington* and
related cases] may or should be applied to determining an unlawful seizure allegation based on
the shooting of a dog, and none of the cases cited by the parties involving that specific situation
cite as a factor whether the officer provoked the dog into the actions which resulted in the
officer’s decision to shoot the dog.”).

1 unexpected circumstances. The facts articulated by the trial court in *Wickersham* are
2 largely analogous to the facts in this case—at least as they pertain to the second shot fired
3 by Officer Coleman. *See Wickersham*, 2015 WL 224810 at *1-2. In *Wickersham*, a
4 70-80 pound Doberman ran down stairs at an officer unexpectedly, reached the officer
5 within a couple of seconds, and was only a few feet away when the officer fired the fatal
6 shots. *See id.*; *see also Wickersham*, 694 F. App’x at 560 (concluding that there was no
7 clearly established Fourth Amendment law prohibiting that conduct). Similarly, in
8 *Patino*, the trial court noted that the officer had about five seconds to react to a pit bull
9 that was running at him aggressively, that the other officer on scene also perceived the
10 dog to be a threat, and that the officer shot and killed the dog when it was within two feet
11 of him. *See* 207 F. Supp. 3d at 1164; *Patino*, 706 F. App’x at 427 (concluding that there
12 was no clearly established Fourth Amendment law prohibiting that conduct).

13 The differences between Officer Coleman’s first and second shot prevent this case
14 from being squarely on point with *Wickersham* and *Patino* in the same way that those
15 factual differences prevent this case from being squarely on point with *Criscuolo*. That,
16 however, is the point. Even when the facts are viewed in Mr. Goon’s favor, portions of
17 Officer Coleman’s conduct bear similarities to conduct that violates clearly established
18 rights related to the use of force against dogs, *see, e.g., Criscuolo*, 540 F. App’x at 563,
19 while other portions of his conduct bear similarities to conduct that does not violate
20 clearly established rights related to the use of force against dogs, *see Wickersham*, 694 F.
21 App’x at 560; *Patino*, 706 F. App’x at 427. Thus, the court concludes that settled law

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1 does not “place the lawfulness of the particular [action] beyond debate,” which means
2 that Officer Coleman is entitled to qualified immunity. *See Emmons*, 139 S. Ct. at 504.

3 Although a “a robust consensus of cases of persuasive authority” can be sufficient
4 to clearly establish rights, *Tuuamalemalō*, 2019 WL 7161278, at *3, the district court
5 cases and out-of-circuit cases Mr. Goon cites are not sufficient to change the court’s
6 conclusion that there is no clearly established law prohibiting Officer Coleman’s conduct.
7 (*See* MSJ Resp. at 14-17.) First, the cases Mr. Goon cites that concluded that a particular
8 use of force against dogs was unreasonable are factually distinguishable, rendering them
9 unpersuasive. *See Andrews v. City of W. Branch, Iowa*, 454 F.3d 914, 916 (8th Cir.
10 2006) (concluding that officer violated the Fourth Amendment by shooting a passive,
11 fenced-in dog without speaking to the dog’s owner, who was a few feet away); *Brown v.*
12 *Muhlenberg Twp.*, 269 F.3d 205, 209-12 (3d Cir. 2001) (concluding that the officer
13 violated the Fourth Amendment by shooting a dog five times—including multiple shots
14 while the dog “tried to crawl away”—where the dog was “10-12 feet away,” “stationary
15 and not growling or barking,” “not display[ing] any aggressive behavior . . . and never
16 tried to attack,” and the owner screamed at the officer not to shoot); *Silva v. City of San*
17 *Leandro*, 744 F. Supp. 2d 1036, 1057 (N.D. Cal. 2010) (concluding that testimony that
18 officers shot a dog that was “walking behind [his owner] in a manner that was not
19 aggressive” despite the owner’s attempts to “signal[] to the officers to wait so he could
20 retrain [the dog]” was enough for a reasonable jury to conclude that the officer violated
21 the Fourth Amendment); *Taylor v. City of Chicago*, No. 09 CV 7911, 2010 WL 4877797,
22 at *1-3 (N.D. Ill. Nov. 23, 2010) (concluding that plaintiffs had pleaded a plausible

1 Fourth Amendment claim on a motion to dismiss where allegations showed that officer
2 shot a dog who was “just standing still and wagging his tail,” despite the presence of
3 neighbors and a seven-year-old girl and her family who were trying to retrieve the dog
4 and asking the officer not to shoot); *Gaulden v. City of Desloge, Mo.*, No. 4:07CV01637
5 ERW, 2009 WL 1035346, at *12 (E.D. Mo. Apr. 16, 2009) (concluding that the
6 plaintiff’s testimony that her dog was “merely trotting beside” the officer from “several
7 feet away” when the officer shot the dog was sufficient to create a genuine factual dispute
8 that precluded summary judgment); *Kincheloe v. Caudle*, No. A-09-CA-010 LY, 2009
9 WL 3381047, at *8 (W.D. Tex. Oct. 16, 2009) (concluding that testimony that an officer
10 shot a dog that had not “charged [the officer] or acted aggressively in any manner” as the
11 dog “walk[ed] slowly toward some bushes” created a genuine dispute of material fact that
12 precluded summary judgment).

13 These cases do not establish a “robust consensus” on the question of whether
14 Officer Coleman’s conduct violated clearly established law—which is what the Ninth
15 Circuit requires to find clearly established law in the absence of controlling authority.
16 *See Tuuamalemalō*, 2019 WL 7161278, at *3. There are a number of relevant cases that
17 Mr. Goon does not cite that concluded that officers either did not violate the Fourth
18 Amendment or were entitled to qualified immunity under similar circumstances. *See*,
19 *e.g.*, *Newman v. Cty. of Fresno*, No. 116CV01099DADBAM, 2018 WL 3533463, at *6
20 (E.D. Cal. July 20, 2018) (“The court has reviewed the video footage of this incident, and
21 the entire encounter between Deputy Hernandez and the dog lasted only a few seconds.
22 While it is possible the deputy could have readied a different force option prior to

1 entering the back yard, as suggested by plaintiff's expert . . . , such an action can only be
2 characterized as necessary in hindsight."); *Niesen*, 2016 WL 4126382, at *10 (E.D. Cal.
3 July 5, 2016) ("After the dogs had unexpectedly escaped from the bedroom in which they
4 were confined and barking and were running toward the [d]eputies, a reasonable
5 conclusion of the [d]eputies, if not the only reasonable conclusion, was that the dogs were
6 about to attack the strangers in the [h]ouse."); *Bateman v. Driggett*, No. 11-13142, 2012
7 WL 2564839, at *8 (E.D. Mich. July 2, 2012) (concluding that an officer did not violate
8 Fourth Amendment where the officer was on a porch for "less than a minute when he saw
9 [p]laintiff's large pit bull run out of the garage directly at him" and the officer shot the
10 dog only after attempting to flee); *Birkes*, 2011 WL 1792135, at *7 (concluding that an
11 officer did not violate the Fourth Amendment when the officer shot a dog that was "five
12 feet away" and "moving toward him in a rapid manner which the dog's guardian could
13 not restrain"); *McCarthy v. Kootenai Cty.*, No. CV08-294-N-EJL, 2009 WL 3823106, at
14 *6 (D. Idaho Nov. 12, 2009) ("The Court finds that a reasonable officer concerned about
15 his personal safety would not have understood that shooting the dog violated a clearly
16 established constitutional right."); *Dziekan v. Gaynor*, 376 F. Supp. 2d 267, 273 (D.
17 Conn. 2005) ("[R]easonably competent officers could disagree as to the appropriate
18 course of conduct when faced with the potential harm posed by an unleashed 55-to-60
19 pound dog running in circles within approximately 15 feet of an officer.").

20 In sum, the court concludes that there is no "controlling authority or a robust
21 consensus of cases of persuasive authority," *Tuuamalemallo*, 2019 WL 7161278, at *3,
22 that clearly establishes that Officer Coleman's conduct violated the Fourth Amendment.

1 As such, Officer Coleman is entitled to qualified immunity on Mr. Goon's 42 U.S.C. §
2 1983 claim. Thus, the court GRANTS summary judgment in favor of Mr. Coleman on
3 Mr. Goon's Section 1983 claim.

4 4. Mr. Goon's State Law Claims

5 Dismissal of Mr. Goon's § 1983 claim eliminates the only claim that falls within
6 the court's original jurisdiction under 28 U.S.C. § 1331. (*See* Am. Compl. ¶¶ 1, 49-53.)
7 Accordingly, the court has discretion to decline to exercise supplemental jurisdiction over
8 Mr. Goon's remaining state law claims. *See* 28 U.S.C. § 1367(c)(3); *Harrell v. 20th*
9 *Century Ins. Co.*, 934 F.2d 203, 205 (9th Cir. 1991); *Schneider v. TRW, Inc.*, 938 F.2d
10 986, 994-95 (9th Cir. 1991). "To decline jurisdiction under § 1367(c)(3), the district
11 court must first identify the dismissal that triggers the exercise of discretion and then
12 explain how declining jurisdiction serves the objectives of economy, convenience and
13 fairness to the parties, and comity." *Trustees of Constr. Indus. & Laborers Health &*
14 *Welfare Tr. v. Desert Valley Landscape & Maint., Inc.*, 333 F.3d 923, 925 (9th Cir.
15 2003). "[I]n the usual case in which all federal-law claims are eliminated before trial, the
16 balance of factors to be considered . . . will point toward declining to exercise jurisdiction
17 over the remaining state-law claims." *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343,
18 350 n.7 (1988).

19 The court declines to exercise supplemental jurisdiction over the state law claims
20 pursuant to § 1367(c)(3). *See* 28 U.S.C. § 1367(c)(3). Now that the court has granted
21 summary judgment against Mr. Goon's federal claims, all that remains of this case are
22 four Washington state tort claims filed by a Washington resident against a Washington

1 corrections officer, the Washington DOC, and the State of Washington that arise out of
2 the shooting of a dog that occurred in Washington. (*See* Compl. ¶¶ 50-53.) Thus, comity
3 weighs in favor of dismissing this case so that it may be refiled in state court. *See*
4 *Newman*, 2018 WL 3533463, at *8 (noting that California-specific claims, defenses, and
5 arguments were “best determined by state courts, since the role of the federal courts in
6 addressing state law claims is to attempt to divine how the California Supreme Court
7 would determine any particular issue”). Moreover, although this case is nearing its trial
8 date, this case is not one where “substantial judicial resources have already been
9 committed” to the state law claims, thereby causing a “duplication of effort.” *See*
10 *Schneider*, 938 F.2d at 994-95. This case has not been heavily litigated. (*See generally*
11 Dkt.) Outside of the current motions, the court has only intervened in one telephonic
12 discovery dispute. (*See* 5/23/19 Min. Entry (Dkt. # 21).) Thus, in sum, this is a
13 Washington-centered case on which the court has expounded little resources, which
14 warrants exercise of the court’s § 1367(c) discretion to decline jurisdiction over the
15 pendent state law claims. *See, e.g., Newman*, 2018 WL 3533463, at *8 (dismissing state
16 law claims under § 1367(c)(3) after granting summary judgment on § 1983 claim based
17 on officer’s use of force against a dog); *Wickersham*, 2015 WL 224810, at *5 (same);
18 *Dziekan*, 376 F. Supp. 2d at 273 (same). Thus, the court DECLINES to exercise
19 supplemental jurisdiction over Mr. Goon’s state law claims and DISMISSES those state
20 law claims without prejudice.

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1 **B. Mr. Goon's Motion to Exclude**

2 Because the court concludes as a matter of law that there is no clearly established
3 law that prohibited Officer Coleman's conduct, *see supra* § III.A.2, the contents of Mr.
4 Berman's report have no impact on the court's determination on summary judgment. Mr.
5 Berman's report and declaration offer a number of conclusions regarding the
6 reasonableness of Officer Coleman's actions that are allegedly based on Mr. Berman's
7 canine expertise. (*See* Berman Rpt. (Dkt. # 27) at 23-32; Berman Decl. (Dkt. # 35).)
8 However, the court concludes that summary judgment is warranted because it is not
9 clearly established that Officer Coleman violated the Fourth Amendment. *See supra*
10 § III.A.3. Mr. Berman's report is not relevant to that issue, which is why the court did
11 not cite or rely on Mr. Berman's report in reaching its decision. *See id.* Thus, the court
12 DENIES as moot Mr. Goon's motion to exclude Mr. Berman.

13 **IV. CONCLUSION**

14 For the reasons set forth above, the court GRANTS in part and DECLINES to rule
15 in part on Defendants' motion for summary judgment (Dkt. # 30). Specifically, the court
16 GRANTS summary judgment on Mr. Goon's 42 U.S.C. § 1983 claim, and DECLINES to
17 rule on Defendants' motion for summary judgment regarding Mr. Goon's state law
18 claims. Having granted summary judgment on Mr. Goon's only federal claim, the court
19 DECLINES to exercise supplemental jurisdiction over Mr. Goon's remaining state law

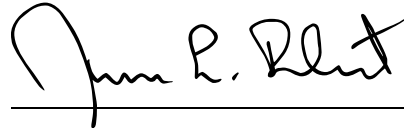
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1 claims and therefore DISMISSES the state law claims without prejudice. Finally, the
2 court DENIES as moot Mr. Goon's motion to exclude Mr. Berman (Dkt. # 27).

3 Dated this 21st day of January, 2020.

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6 JAMES L. ROBART
7 United States District Judge
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